



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

## GENS, FAMILIA, STIRPS

By MAX RADIN

To advance a new theory of the Roman *gens* is, in effect, to attempt a reconstruction of early Roman history, and scholars may be forgiven if they show scant patience with those who undertake to darken counsel on this subject. It is, indeed, rather unlikely that newer conjectures will be markedly more convincing than the many that have been offered to the choice of the investigator. But it may very properly be questioned whether all the facts on which these conjectures ought to be based have been ascertained.

If we seek to discover what the *gens* was in the days of Roma Quadrata—if such a city existed—or even at the time of the Struggle of the Orders, we shall be hopelessly handicapped by lack of documents. Our only resource is to attempt to find out what the *gens* was at a period when documents are fairly numerous, and to reason back with progressive uncertainty as far as we care to go.

The most common view of the *gens* is the one recently set forth by Kübler in Pauly-Wissowa-Kroll, *Realencyclopädie*, VII, 1176–98. Briefly, it may be said to be the following. The *gentes* as such were originally patrician solely. After the virtual surrender of the patriciate, plebeians also constituted themselves into *gentes* or *quasi-gentes*.<sup>1</sup> The right to call these new organizations *gentes* was at first contested by the patricians but ultimately acquiesced in and legally acknowledged. *Gentes* were officially divided into *familiae* or *stirpes*.<sup>2</sup>

Against this view, Professor Botsford in his article “Problems Connected with the Roman Gens” (*Political Science Quarterly*, XXII [1907], 665) maintains that the *gens* was at all times both patrician and plebeian, i.e., contained both patrician and plebeian members. Both scholars, however, take for granted that, at the close of the Republic, the term *gens* was unhesitatingly applied to

<sup>1</sup> Cf. Lécrivain, *s.v.* *gens*; Daremberg-Saglio, *Dictionnaire des antiquités*.

<sup>2</sup> Both Kübler and Botsford (cf. *infra*) reject the assertion made by Lécrivain (*op. cit.*, p. 1515) that *stirps* was the official title of the plebeian group.

either patrician or plebeian super-families, and that *familiae* or *stirpes* were the divisions of these *gentes*. Kübler notices that *familia* is seemingly a variant for *gens* in many passages and believes that the "confusion" of these terms begins with Cicero.<sup>1</sup> When, however, we read (p. 1180): "es gab sowohl patrizische wie plebeische gentes. Von plebeischen finden wir erwähnt," etc., the impression must not be obtained that, in most of these cases, the families in question are characterized as *gentes* in the passages from which they are quoted. In almost every instance—the exceptions will be noted later—the term is *familia* or *genus*.<sup>2</sup> Besides the enumerated plebeian *gentes* Kübler lays stress on the expression, "*patricia gens*," from which he infers the existence and recognition of *plebeiae gentes*.<sup>3</sup>

If we leave aside all consideration of the original nature of the *gens*, and confine ourselves to a period definitely historical, for which relatively numerous documents are extant, it will be well to consider first the one writer who *ex professo* sets forth the development of the Roman state, and whose statements, qualified, interpreted, or inverted, are none the less the basis of all that is solid in our knowledge of Roman history, Livy. It is quite true that modern critics will not accept any statement of Livy about a condition or a fact for which his evidence is not obvious. But he is surely excellent authority about what he himself believes. And it is solely with the view of determining Livy's own idea of the *gens* that the following material has been collected.

#### *gens*

*Gens* is used in a number of quite distinct cases in Livy.

a) The commonest meaning is that of "tribe," "race," "people."<sup>4</sup> In the plural, *gentes*, especially in the phrase *ius gentium* (iii. 4. 7, and *passim*), it denotes "the human race."

<sup>1</sup> *Op. cit.*, p. 1177: "Schon zu Ciceros Zeit aber beginnt sich der Unterschied zwischen *gens* und *familia* zu verwischen."

<sup>2</sup> In one instance the citation has evidently been made inadvertently. Cicero *De har. res.* 32 does not refer either to the *gens* or the *familia* Calpurnia. The phrase is, *multi sunt in hoc ordine* [i. e., *in senatu*] *qui sacrificia gentilicia factitarent*.

<sup>3</sup> If Kübler's words "die gleichfalls vorkommen" indicate his belief that such a phrase as *gens plebeia* occurs, other instances must be cited than the two offered here, viz., Cic. *De legg.* ii. 55 and Suet. *Nero* 50. Neither contains the phrase.

<sup>4</sup> I suppose I may be spared the necessity of citing instances of this use. It occurs on practically every page of Livy.

There seems to be no trace in Livy of the distinction which Tacitus<sup>1</sup> sought to make (*Germania* ii, xxvii, xxxviii) by which *natio* is made a subdivision of *gens*. In Livy, *natio* has its technical legal designation of "birth" and is used particularly to denote the origin of slaves (xxi. 46. 10). *Gens* means any national or racial group, large or small, as indeed it does throughout Latin.<sup>2</sup>

b) *Gens* is used to designate a Roman clan or super-family, i.e., a group of men believing themselves to be descended from a common ancestor, but unable to trace that descent in detail. In this sense, which more especially interests us, the following, as far as I can find, are all the instances in Livy: *Claudia gens* iii. 58. 5; vi. 20. 3; 40. 3; iv. 3. 14; *Cornelia gens* viii. 18. 8; xxxv. 10. 9; xxxviii. 58. 3; xlv. 41; *Fabia gens* ii. 43. 11; 45. 16; 48. 8 (*bis*); 49. 2; 49. 3; 49. 4; 50. 2; 50. 11; iii. 1. 1; v. 46. 2; 52. 3; 52. 4; viii. 32. 15; xlv. 41; *Furia gens* xxxi. 48. 12; *Horatia gens* i. 26. 13; *Iulia gens* i. 3. 2; *Manlia gens* vi. 11. 2; 20. 14 (*bis*); *Potitia gens* ix. 29. 9; 34. 19; *Quinctia gens* iii. 11. 6; 12. 3; vii. 39. 12; *Sergia gens* viii. 18. 8; *Sestia gens* iii. 33. 9; *Silvia gens* i. 3. 10; *Tarquinia gens* ii. 2. 3; 2. 7; 2. 11; *Tarquitia gens* iii. 27. 1.

c) The plural is used in the same sense, referring expressly to patrician clans: *minores gentes* i. 35. 6; 47. 7; *maiestas earum gentium* vi. 40. 4; *suarum gentium* (*Furiae Quinctiae Corneliae*) *viris* vii. 1. 2; *patriciae gentes* x. 15. 9.

d) Again, without such specific reference, *confundere iura gentium* iv. 1. 2; *conlunio gentium* iv. 2. 5; *nova iura gentium* iv. 4. 4; *discrimina gentium* v. 14. 4; *turbato gentium iure* vii. 6. 11.

e) The legal phrases *gentem habere* x. 8. 9; *gentis enuptio* xxxix. 19.

f) Rarely it is used of similar clans or super-families outside of Rome: *ab antiqua gente Aequicolis* i. 32. 5; *certae gentis sacerdos* v. 22. 5; *gens Barcina* xxiii. 41. 2.

g) Derivative adjectives and nouns are rare: *gentilicia sacra* (*Fabiorum*) v. 52. 4; *gentiles* (*Claudii*) iii. 58. 1.

### *familia*

*Familia*, too, is used in several wholly different ways:

a) In the undoubtedly original sense of a group of *famuli*, i.e., all those living chattels that were not *pecunia*. This is chiefly, but not wholly, in legal phrases: *familia armata* iii. 14. 9; *ut familia venum iret* iii. 55. 7; *familiam in potestate habere* viii. 15. 9; *ipsi familiaeque eorum* xxvi. 27. 8; *familia arcessita* xxxix. 14; *familiae heredes* xlv. 40. To this we may add the adjective in the phrase *res familiaris* iv. 60. 2.

<sup>1</sup> Cf. the note on chap. ii in the Church and Brodribb edition of the *Germania*, p. 32; cf. also Velleius ii. 98.

<sup>2</sup> The doublet *gentes ac nationes* is intended to cover every variety of loosely organized tribes (Ulpian on the Census, *Dig.* 50. 15. 1. 5).

b) As equivalent to "family" in the narrow sense, i.e., that group of men descended from the same known ancestor, who could be contemporaries of one another—the Greek ἀγγείσται.<sup>1</sup> Besides the technical term *familia funesta* ii. 8. 9; 47. 10; xxvi. 18. 11, we have *duae familiae* iv. 61. 10; *duodecim familiae Potitiorum* ix. 29. 10; *execratio familiae* x. 38. 10; 41. 3; *per familias* xxi. 54. 2; *comploratus familiarum* xxii. 55. 7; *in singulas familias* xxvi. 34. 2; *familia nostra* xxvi. 41. 8; *familiae aliquot* xxix. 31. 8; *cum familiis* xxxix. 53; xl. 3; xli. 8; xliii. 17. There are further phrases containing adjectives: *familiale ostentum* xxvi. 6. 14; *familiaris orbitas* xxvi. 41. 9; *familiaris luctus* xxvii. 51. 12; *familiaris amicitia* xxxii. 22. 11.

c) In the sense of super-family, i.e. = *gens*: *Aelia* iv. 54. 3; xxii. 35. 2; *Atilia* xxii. 35. 2; *Cassia* ii. 41. 10; iv. 15. 5; *Claudia* ii. 56. 7; iv. 15. 5; vi. 40. 6; ix. 29. 8; 33. 3; 34. 3; 34. 15. *familiale consilium* iv. 48. 6; *Claudia Marcellorum* xxv. 29. 6; *Cornelia Scipionum* xxviii. 41. 15; xxxviii. 55. 2; 58. 3; 59. 11; *Decia*, *familiale fatum* x. 28. 13; *Fabia* ii. 42. 8; ii. 49. 4; *familiale bellum* ii. 48. 9; *Icilia* iv. 52. 2; iv. 54. 4; *Licinia* v. 22. 2; vii. 9. 5; *Manlia* vii. 10. 13; *Papiria* x. 39. 14; *Pinaria* i. 7. 12; *Popillia* xlii. 22; *Potitia* i. 7. 12; 7. 14; *familiae sacerdotium* ix. 29. 9; *Pupia* iv. 54. 3; *Quinctia* iii. 12. 2; 25. 3; *Silia* iv. 54. 3; *Trebonia* v. 10. 11; *Valeria* i. 20. 2; ii. 18. 7; 30. 6; iii. 17. 8; vii. 32. 13; 32. 15; x. 9. 3; *Vibia* xl. 44.<sup>2</sup>

d) The plural is likewise used in the sense of c): *splendor familiarum* iv. 15. 5; *patricii plebeique nobilissimarum familiarum* xxxix. 53; *dum familiae ad se famam mendacio trahunt* viii. 40. 4; *multas familias* xxiii. 4. 7.

e) As in the case of *gens*, the word may be used of corresponding non-Roman clans: *familia Mopsiorum* xxiii. 1. 2; *familia Barcina* xxiii. 13. 6; *familia inimica* (Numidian) xxiv. 29. 8; *familia Blossiorum* xxvii. 3. 5; *familiaria iura* xxiv. 5. 9.

Livy has still other ways of referring to the family or super-family.

#### *domus*

*domus Iunia* ii. 5. 7. Frequently of families proper (i.e., in the restricted sense): i. 40. 3; iii. 37. 2; 58. 11; iv. 13. 8; 31. 5; 40. 3; xxvi. 18. 11; xxviii. 41. 14; xxx. 20. 4; 30. 13; xl. 4. 8; xlv. 41.

#### *genus*

*Pinarium genus* i. 7. 13; *genus Potitiorum* i. 7. 14; *genus Fabium* ii. 46. 4; *plebei generis* iv. 9. 4; *memor generis* (Corneli) iv. 19. 1; *Cilnium genus* x. 3. 2; 5. 13.

#### *nomen*

*Fabium nomen* ii. 42. 2; 42. 8; 45. 16; *nomen Potitiorum* ix. 29. 11; *nomen Marcellorum* xxv. 29. 6.

<sup>1</sup> This will cover at most four generations. Cf. Festus 221 M.

<sup>2</sup> In some instances, notably in those of the Decii and the Scipios, it is not clear whether *familia* is used in the sense of b) or c).

*Gentile Name in Plural*

Fabii ii. 47. 12; 48. 8; 48. 10; 49. 1; 49. 2; 50. 1; 51. 5; Valerii Horatii iii. 39. 3; Claudii Cassii iv. 15. 5; Iunii, Valerii, Fabii, Quinctii, Corneli ix. 17. 11; Calavii xxvi. 27. 7.

If we examine these facts without preformed hypotheses, we should never infer that Livy's views of *gens* and *familia* were those of Kübler. Considering the instances cited under *gens b*), we find that in every case the reference is to a patrician clan, or, at any rate, to a clan, expressly designated as such by Livy. In the corresponding group, *familia c*), we meet with very many instances of patrician clans, and also with plebeian clans.<sup>1</sup> That this holds throughout the entire extant work of Livy, viz., thirty-five books, can scarcely be an accident. We may, therefore, legitimately infer that Livy considered the word *familia* to be the term of larger extension, covering all family groups of any size or character, but believed that the term *gens* denoted a family group of patrician lineage and could properly be used of no other. The term *patricia gens* (cf. *supra*) does not presume the existence of a corresponding term *gens plebeia*; nor is a similar implication contained in *suarum gentium* (vii. 1. 2). In the first place, the term *plebeia gens*, as far as I know, does not exist in the Latin of this period, or of any period near it in time. In the second place, the adjective can be descriptive as well as limiting.<sup>2</sup>

Again, the plural use of *gens*, in *gens d*), especially *discrimina gentium* v. 14. 4, is equally indefinite. It will be noted that all the instances but one deal with the agitation about the lex Canuleia. They can all be interpreted in perfect accordance with the usage of Livy indicated above, and, at any rate, do not necessarily conflict with it.

Only in *gens f*) does Livy permit himself a certain freedom in the use of the word *gens*. Even here, the reference is to certain families that may properly be called illustrious. Besides, the distinction would be wholly pointless anywhere except at Rome.<sup>3</sup>

<sup>1</sup> The Claudii, Corneli, Fabii, Manlii, Potitii, Quinctii appear in both lists. The undoubtedly patrician Pinarii and Valerii are referred to only as *familiae*.

<sup>2</sup> One may, it is submitted, speak of "the patrician *interrex*" and "the plebeian tribunes" without of necessity implying the existence of plebeian *interreges* and patrician tribunes.

<sup>3</sup> In his valuable study of words of relationship in early Latin, J. Köhm (*Allgemeine Forschungen* [1905], pp. 16-18) finds no instance of *gens* except in meaning *a*) (except one corrupt passage from Accius [Ribbeck, *Trag. Frag. Accius* 580]). *Familia* is generally used in meaning *a*) (pp. 1-5), and in the sense of *b*) (p. 6).

Of the plebeian "*gentes*" cited by Kübler from Cicero (cf. *supra*) only a few are actually so denominated. Of these the Minucii (Cicero *Verr.* i. 115) at least maintained that they were patrician originally (Livy iv. 16. 3). The Fonteii are mentioned (*De domo* 35, and 116, *contaminatis gentibus et quam deseruisti et quam polluisti*; and *non suae genti Fonteiae sed Clodiae*; cf. further, *De har. resp.* 57) only in immediate juxtaposition with the Clodii, so that the latter name may have exercised a sort of assimilation on the former. But in *De legg.* ii. 55 the *gens Popilia* is referred to without such qualification.<sup>1</sup>

However, *gens* in this sense is rare in Cicero. Besides those mentioned, the Cornellii are so designated (*De legg.* ii. 56), the Tarquinii (*Rep.* ii. 46), the Claudii (*passim* and *De domo* 35), the Manlii (*Phil.* i. 32), the Valerii (*Flacc.* 12). In general, it is the word *familia*<sup>2</sup> that is used whether the reference is to patrician or plebeian. Besides that, there are a number of phrases or rather paraphrases, which seem especially designed to cover the idea contained in *gens*, e.g., *genus ac nomen* (*Verr.* iv. 79), *genus et familia* (*Lig.* 12; *Muren.* 90), *familia genus nomen* (*Muren.* 12), *genus nomen familia* (*Lig.* 20), *genus familiaque* (*Planc.* 18). Speaking of Clodia, Cicero says (*Cael.* 33) that she had married *ex amplissimo genere in familiam nobilissimam*.

It is plain from what has been said that Cicero does not systematically observe the distinction carefully made by Livy. If he had wished to do so, there could have been no better opportunity than in the Caeliana, where the pretensions of the patrician Claudii and plebeian Caecilii are contrasted. But the relative infrequency of *gens*, and the preponderance of patricians, or of particularly illustrious plebeians (Minucii, Popilii) in the instances that do occur, render it at least probable that Cicero did not feel the terms *gens* and *familia* to be quite interchangeable.

Other writers of that time do not offer sufficient instances to permit safe inferences about their usage. One instance from Varro

<sup>1</sup> It will, however, be noted that the Popilii are among the first plebeians to hold curule offices. Cf. M. Popilius Laenas, consul 358 B.C. (Livy vii. 12. 1). In the same way, the Licinii, the very oldest of all plebeian *nobiles*, are called *gens* (Varro *R. R.* i. 2. 9).

<sup>2</sup> Cf. particularly the *Pro Murena* and *Pro Plancio*, where there is constant occasion to mention the claims of families and clans.

has already been cited. Caesar uses *gentes* of the German clans<sup>1</sup> and again of his own family in the funeral laudation of his aunt Julia: *A Venere Iulii, cuius gentis familia est nostra*.<sup>2</sup> Sallust speaks of *Corneliorum gens* (*Cat.* 55) and *gens Aemilia* (*Phil.* 6).<sup>3</sup> In the passages from Caesar and in Sall. *Jug.* 95 we find *gens* and *familia* used side by side in the sense which makes *familia* a subdivision of *gens*. As has been seen, that is distinctly not the rule for Cicero and Livy. *Familia* is the more extensive word and may mean either the family proper or the super-family or clan, and is by far the commoner word in both senses. *Gens* is rarer, and, where it does not mean "race" or "tribe," means "clan" only.<sup>4</sup>

What is true of the nouns *gens* and *familia* does not, of necessity, hold true of the derivatives *gentilis* and *familiaris*. As adjectives they probably followed the fortunes of the words from which they come.<sup>5</sup> But the commonest use of these words is substantive. As a substantive *familiaris* is common in all Latin in the meaning of "friend." Festus (86 M.) states that members of the same *familia*, either *familia a*) or *familia b*) (cf. *supra*) may be so designated. However that may be, the first meaning is undoubtedly the more general. The others have only slight literary currency, if any.<sup>6</sup>

For *gentiles* we have the much quoted definition of Q. Scaevola preserved by Cicero in *Topica* 6. 29: *Gentiles sunt inter se qui eodem nomine sunt, qui ab ingenuis oriundi sunt, quorum maiorum nemo servitutem servivit, qui capite non sunt deminuti*. In substance this is repeated by L. Cincius, Cicero's contemporary, *gentiles mihi sunt qui meo nomine appellantur*.<sup>7</sup>

This definition can scarcely have been offered otherwise than to decide a concrete dispute. By the Twelve Tables, certain substantial rights of inheritance and guardianship are given to the *gentiles*. It is obviously of very great moment to know who may and who

<sup>1</sup> Combined with *cognationes* (*B. G.* vi. 22. 2).

<sup>2</sup> Suet. *Div. Iul.* 6.

<sup>3</sup> Cf. the constant reference to the Aemilii as *familia* in the Scauriana, e.g., 45.

<sup>4</sup> Cf., however, *infra* the instances from Livy (xl. 21), Sallust (*Jug.* 108), Trog. Pomp. (xxviii. 3. 4).

<sup>5</sup> Cf. *gentile monimentum* (Domitii, Suet. *Nero* 53) and *familia sepulchrum* (Gaius *Dig.* 11. 7. 5).

<sup>6</sup> Cf. the instances in Köhm, *Allateinische Forschungen*, p. 11.

<sup>7</sup> Festus, s.v. *gentilis*, 94 M.



may not be considered *gentiles*. Now, by a quite apparent etymology, *gentiles* were blood kinsmen, and yet it was equally apparent that the kinship of many undoubted *gentiles* was not demonstrable by ordinary evidence. The general principle of Roman law in such cases was that stated by Papinian (*Dig.* 22. 3. 1): *quotiens quaereretur genus vel gentem quis haberet necne, eum probare oportet*.<sup>1</sup> Scaevola, then, sought to establish that the proof of a common *nomen* was itself presumptive evidence of community of descent. There were, however, in Rome two very large classes of men bearing any specified *nomen* who were demonstrably not of the same descent as others of that *nomen*. These were, first, emancipated slaves and, secondly, men adopted from other *gentes*.<sup>2</sup> These were accordingly expressly excepted. The fact that no others were expressly excepted may be taken to indicate that in the time of Scaevola, i.e., about 100 B.C., there were no other Romans bearing a certain *nomen* and demonstrably of different actual origin from other Romans bearing that *nomen*.<sup>3</sup>

If that is so, certain rather far-reaching inferences may be permitted. Clients in Rome sometimes bore the gentile names of their patron and sometimes did not. It would follow from what has gone before (since clients are not excepted in Scaevola's definition) that where they did bear that name they were of libertine origin, and that where the clientela arose in any other way, e.g., by voluntary commendation of one free man to another, the client did not assume his patron's name.<sup>4</sup> In the generation almost immediately after Scaevola we meet with many men, neither *libertini* nor *libertini*

<sup>1</sup> This formulation is late, but *gentem habere*, in view of the fact that gentile law was obsolete in Papinian's time, shows that it must go back much earlier.

<sup>2</sup> By Roman law, adopted children suffered *capitis deminutio minima*. To be sure, this applied to those adopted from one family into another of the same gens, as Botsford points out (*loc. cit.*), so that the adopted child, although *capite deminutus*, might nevertheless be of the same actual blood as the others of his name. But these instances seem to have been very rare. In general, it is not at all strange that the individual's right to create claimants to the substantial rights of a *gens* should be denied by Scaevola.

<sup>3</sup> The definition is not quite accurate in another respect. Taken literally it would exclude even Romans captured in war and later restored to their country. Cf. the senator C. Terentius Culleo (Livy xx. 45. 5), and especially the consul Servilius (Livy xxvii. 21. 10; xxx. 19. 8-9). Cf. my note on this point, "The Case of the Marcelli," *Class. Phil.*, VII, 481.

<sup>4</sup> Cf. the instances given by Botsford, *Political Science Quarterly*, XXII, 673, and quoted by Kübler, *op. cit.*, p. 1179.

*generis*, nor yet, strictly, *clientes*, who bore well-known gentile names. The most notable instances are such men as the Antiochene Archias and the Spaniard Balbus. We may speak of them as naturalized foreigners. If cases of this kind had been known to Scaevola, it is scarcely conceivable that he would not have specifically excluded them. Since he did not, and since it cannot be supposed that he would have permitted Archias to share in all the gentile prerogatives of the Crassi, or Balbus in all those of the Scipios, we may conclude that instances of such names did not exist in his time.

We know of many cases, long before Scaevola, where either individual foreigners or the citizens of any entire community received Roman citizenship. The Libyphoenician Muttines (Livy xxvi. 7. 8) and the poet Ennius may serve as examples. But we do not know of a single case where such a naturalized foreigner adopted an already existing Roman name. Bücheler makes the *nomen* of the Umbrian Plautus a Romanization of his rôle of Maccus.<sup>1</sup> We have no evidence of Maccii in Rome before Plautus or of Ennii before Ennius. The procedure presumably adopted by Plautus, or something like it, may well have been the rule. The condition of affairs in Cicero's time, when such foreigners upon naturalization did not hesitate to adopt the most illustrious names, is so decidedly different, that we must look for a fixed point at which the change took place.

Such a point may be found in the *lex Plautia-Papiria* of 89 B.C. which opened Roman citizenship in wholesale fashion to thousands of foreigners. The practical necessities of immediate registration—the law allowed only sixty days—probably compelled the hasty assumption of *praenomen* and *nomen*, and it is to be assumed that the clerks of the various praetors were not over particular.<sup>2</sup>

One thing in general may be noted in connection with the definition of Scaevola. It is made by a plebeian. If, according to the traditional view, the right of belonging to a *gens*, properly so called, was a moot point between patricians and plebeians, it is highly

<sup>1</sup> *Rhein. Mus.*, 41, 12; cf., however, W. Schultze, *Zur Gesch. der lat. Eigennamen*, pp. 298 ff.

<sup>2</sup> The arbitrary assumption of any name would not of itself render the offender liable to the penalties of the *lex Cornelia de falsis* (81 B.C.) (cf. Kübler, *op. cit.*, p. 1177). That was the case only if the adoption of the name was coupled with specific fraudulent intent. Cf. the passage there quoted (Paul. Sent. v. 25. 11). One may also compare a late rescript, of Diocletian, of 293 A.D. (*Cod. Iust.* 9. 25).

probable that a plebeian *iuris prudens* would consciously make his decision cover the claims of his order. How authoritative such a decision would be depended, certainly till Augustus, upon the personal views of the single iudex or of the majority of the iudicium, which considered any given case. There is no doubt, however, that ultimately the decision became generally accepted.

The definition appealed particularly to Cicero. He had more than one occasion to combat the pretensions of the patricians to exclusive nobility,<sup>1</sup> and of the nobility as a whole.<sup>2</sup> It pleased him to consider himself a *gentilis* of Servius Tullius (*Tusc.* i. 38).<sup>3</sup> The reference, of course, is half-jesting, but it depends upon the definition of Scaevola for its point, as does the statement (*Verr.* ii. 190) that Verrucius was *paene gentilis* to Verres.

The passage from Cicero's translation of the *Timaeus*, to which Kübler (p. 1177) attaches great importance, does not seem to me more than a direct application of the Scaevolan doctrine. It is merely the expansion of the *ὁμῶννυμον* of the original. What the context is which in Kübler's view contradicts this simple explanation is not apparent. Kübler is surely wrong when (p. 1180) he seeks to establish that Cicero conceived men to bear to the gods the relation of clients. There is no such statement in the Platonic passage (*Tim.* 41 C) which Cicero is translating. On the contrary, as to that part of man which is *θεῖον*, men are equated with the gods and not inferior to them. In every other respect gods and men stand in no relation whatever. There is nothing in Cicero to indicate that he understood Plato differently. The word *quasi* need have no legal significance. It is simply the apology for an unexpected word, *gentilis*.

This can be seen more clearly from two other passages of Cicero—*De legg.* i. 23: *ut homines deorum agnatione et gente teneantur*

<sup>1</sup> Cf. *Pro Murena* 15: *si tibi hoc sumis nisi qui patricius sit, neminem bono esse genere natum, etc.*

<sup>2</sup> Cf. *Pro Plancio* 17–18.

<sup>3</sup> With this statement, we may compare the following from *Brutus* 62: *Multa enim scripta sunt in eis (sc. laudationibus) quae facta non sunt, falsi triumphi, plures consulatus, genera etiam falsa et ad plebem transitiones, cum homines humiliores in alienum eiusdem nominis infunderentur genus; ut si ego me a M' Tullio esse dicerem, qui patricius cum Ser. Sulpicio consul anno decimo post exactos reges fuit.* We find, therefore, that Cicero regarded himself as an undoubted *gentilis* of Servius Tullius, but expressly disclaimed any pretension to blood relationship with the patrician Tullii.

and i. 24: *ex quo vere vel agnatio nobis cum caelestibus vel genus vel stirps appellari potest*. The same idea is present here as in the *Timaeus*. Men are not clients of the gods, but actual kinsmen.

In discussing the various uses of the word *gens* in Livy, two instances, marked e) *gentem habere* (x. 8. 9) and *gentis enuptio* (xxxix. 19) were reserved for separate treatment.

As far as *gentem habere* is concerned, Kübler's view seems better than Botsford's. The latter's objection was based upon the citation of this phrase to demonstrate the exclusively patrician character of the original gens. The phrase, however, can be legitimately adduced only as evidence of Livy's own conception of the *gens*, and for that, as I have tried to show, there is other and better evidence. *Gens* can indeed be used with the meaning of "birth,"<sup>1</sup> but the phrase *gentem habere* is established in the sense demanded by Kübler, not only by the passage from Papinian (*Dig.* 22. 3. 1), but also by the fact that similar phrases are likewise known to the law. So *collegium habere* (*CIL*, III, 2924; I, 20; Bruns, *Fontes*<sup>7</sup>, p. 351), from the Dacian wax tablets, means the right of belonging to the corporation, and *tribum habere* (*Cic. Phil.* vi. 12) means legal membership in a tribe.

The other term, *gentis enuptio*, has been made the subject of a discussion in which the context seems to have been lost sight of. As a reward for her services in the Bacchanalian investigation, Fecennia Hispala (Livy xxxix. 19) received officially the *datio diminutio gentis enuptio tutoris optio quasi ei vir testamento dedisset*. It is self-evident that the phrase is part of a legal formula, a formula by which the senate attempted to confer upon Fecennia the most nearly complete disposal of her person and property which the law made possible for women. To do this, the senate consciously strove to put her in the position of a widow without male kinsmen, who has received from her husband by will the right of choosing her guardian—a purely formal guardian, it may be remembered, who could not refuse his *auctoritas* in any transaction. That is about what was effected in the law of the empire when a woman received as a special privilege the *ius III liberorum*. It is as idle to seek to determine just what the *gens* was from which Fecennia received *enuptio*, as to attempt to

<sup>1</sup> Hardly however in the sense of "illustrious" birth (Botsford, *op. cit.*, 667).

demonstrate that every woman in the second case actually had borne three children. The privilege in both instances could be conferred *honoris causa*, and need have no basis whatever in the actual circumstances of Fecennia's case.<sup>1</sup>

The phrase does not occur elsewhere. *Enubere e patribus* (Livy x. 23) is not at all the same thing. The full meaning of the expression, as well as of the words *familia[e] gens* and *eiusdem gentis* of the Laudatio Turiae (*CIL*, VI, 1527; Supp. 31670; Bruns, *Fontes*<sup>7</sup>, 321), can be determined only when we have reached quite certain conclusions as to the existence of a *legitima tutela gentilium* for women.

In one or two passages, finally, *gens* is used in a way that can clearly be distinguished from all the instances already cited. These are, first, Livy xl. 21: *non posse oblivisci se in talibus rebus Antigoni qui . . . praecepisse liberis diceretur, ne quis cum tota gente simul in rebus dubiis periclitari auderet*. As this is Philip's pretext for not taking both Demetrius and Perseus with him, it is plain that *gens* means no more here than "offspring," as we shall see *stirps* means (cf. *infra*).<sup>2</sup> The second is the phrase of Sallust, *Jug.* 108, Dabar, *ex gente Masinissae*. Dabar was Masinissa's grandson. The word *gens* here again has the sense we shall find generally expressed by *stirps*. Cf. also *ex gente regia* (Trog. Pomp. xxviii. 3. 4).

However isolated, these instances compel us to assume that *gens* could be intelligibly used in the general sense of "relationship" or "line," a meaning, of course, easily obtained from its etymology.

#### *stirps*

The only purpose of the classification of the various meanings of *stirps* is to eliminate one meaning that is frequently attached to it. Kübler, following nearly all his predecessors, makes *stirps* or *familia* the division of a *gens* (*op. cit.*, p. 1177).<sup>3</sup> This meaning of *stirps* is used in discussing the case of the Marcelli (Kübler, *op. cit.*, p. 1190) and determines the interpretation there suggested.

In Livy, *stirps* is used as follows: (a) as equivalent to "offspring": *stirps virilis* (i. 1. 11; 3. 11; 40. 3 and *passim*); (b) as equivalent to "line," "descent," "origin": *regia stirps* (i. 5. 5); *Italica stirps* (i. 40. 2); *peregrina*

<sup>1</sup> Botsford takes the phrase literally. Kübler (*op. cit.*, 1179) seems to hold that it is purely formal here.

<sup>2</sup> This proverbial expression seems to me to account quite adequately for the *cum tota gente* of Catullus 79. 2 = "You and all your kith and kin."

<sup>3</sup> All the citations there are concerned with *familia* and do not mention *stirps*.

*stirps* (5. 34. 1); *ab stirpe Claudia* (iv. 48. 10); (c) as equivalent to "generation": *ad tertiam stirpem* (xxxiii. 21. 5); cf. the frequent *in stirpes* in legal discussions (Gaius iii. 8. 16); (d) in the figurative sense drawn from the literal meaning of *stirps*: *a stirpe tollere* (xxxiv. 2. 3); *ab stirpe extinguere* (ix. 34. 19); *ad stirpem devolvere* (i. 47. 5); (e) in such combined phrases as *stirps genti* (ii. 50. 11); *stirps gentis* (xxxvii. 8. 4); where one of the meanings already indicated may be applied.

Besides the literal meaning—also found in Livy (xxvi. 41. 22)—the instances cover practically all the meanings found for *stirps* throughout Latin. Nowhere is a clear example adduced of *stirps* as a division of a *gens*. The term retains, at all times, something of the abstract sense of "origin," "line."<sup>1</sup> Under these circumstances the constantly recurring statement that *stirps* as well as *familia* is an ordinary term denoting the division of the *gens* should be rejected, as well as all interpretations based upon that use of the word.

NEWTOWN HIGH SCHOOL

NEW YORK CITY

<sup>1</sup> Cf. especially the instances from early Latin brought together by Köhm (*op. cit.*, p. 21).